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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,670	10/02/2000	George H. Scherr		4775

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33 Monee Road
Park Forest, IL 60466

EXAMINER

SHARAREH, SHAHNAM J

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 05/07/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/676,670

Applicant(s)

SCHERR, GEORGE H.

Examiner

Shahnam Sharareh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/02/2000, 12/25/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 20-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

Applicant's election of Group I, claims 1-19 in Paper No. 3 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 20-54 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 3.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-19 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure, which goes to make up the device, must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Claim 1 recites the limitation "said composite mixture" in line 12 of the claim. There is insufficient antecedent basis for this limitation in the claim.

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Claim 3 recites the limitation "polyvalent cation" 1 of the claims. There is insufficient antecedent basis for this limitation in the claim. Applicant is recommended to use consistent terminology in the claim language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole et al US Patent 5,089,606 in view of Strong US Patent 3,948,881.

The instant claims are directed to methods of preparing a water-insoluble alginate sponge or foam comprising (I) making an aqueous alginate solution (II) adding a di or trivalent cation metal ion salt into the alginate aqueous solution (III) adding a gaseous foam-forming or effervescent compound and a water soluble acid to the mixture (IV) adding sodium tetraborate and ammonium hydroxide and (V) pouring the final composition into a fibrous cloth onto a tray and allow the water to evaporate from the composition.

Cole teaches methods of making water-insoluble polysaccharide hydrogel foam comprising (I) preparing an aqueous alginate solution containing sodium alginate (II) adding a divalent cation metal ion salt such as calcium carbonate or sodium carbonate, (III) causing a gaseous reaction by adding an effervescent compound, such as calcium carbonate, and a water soluble acid, such as acetic acid, to the mixture and finally mix the all the components to form a foamed homogenous gel (see col 10, lines 43-58; col 11, lines 1-34). Cole further adds a medicament, such as bactericidal agents, into the final product to provide the desired therapeutic utility (see col 7, lines 1-10; examples 19-26; col 19, lines 37-60). Cole also teaches the use of desirable surfactants or polymers in his compositions (see col 7, lines 17-49). Cole does not teach the steps (IV) and (V) of the instant claims, namely, the addition of sodium tetraborate and ammonium hydroxide to the mixture and pouring the final solution on fibrous cloths.

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Patel teaches the use of similar alginate compositions as wound dressings on absorbent pad or bandages by impregnating the with the alginate composition (see abstract, col 7, lines 45-60). Patel does not use sodium tetraborate and ammonium hydroxide in his mixture.

Strong teaches methods of manufacturing alginate fibers for medical use (see abstracts). Strong is merely used to show that buffering agents such as ammonium hydroxide and sodium tetraborate are conventionally used to neutralize the acidity of alginate solutions during their manufacturing process (see col 7, lines 5-20, example 4, col 14, lines 65-68)

JP 09-119023 (JP '023) teaches alginate solutions that are employed to impregnating gauze or medical cloths in preparing topical dressings. JP '023 also teaches that buffering agents such as ammonium hydroxide can improve the properties of alginate solution (see the translated copy, the abstract, paragraph 007 and 0018 and 0032).

Accordingly, even though Cole fails to specifically use sodium tetraborate and ammonium hydroxide in his final mixture or poured his mixture on a fibrous cloth, it would have been obvious to one of ordinary skill in the art at the time of invention to use buffering agents or combinations thereof, such as sodium tetraborate and ammonium hydroxide, as taught by Strong and JP '023, and further impregnate a fibrous gauze or absorbent pad, as taught by Patel and JP '023, by a method of choice. The ordinary skill in the art would have been motivated to prepare a padded dressing impregnated with

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Cole's alginate solution, because as taught in JP '023 and Patel, such type of dressings are more convenient for use at a clinical or surgical setting.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure, but they are not considered because they are believed not to add any further teachings to the already cited prior art:

- Silveti, US Patent 4,778,679;
- Silveti, US Patent 5,177,065;
- Bakis et al, US Patent 5,851,461;
- Repka et al US Patent 6,375,963;
- Deroyal wound care product and Multidex treatment system package information;
- Scherr US Patent 5,674,524;
- Della Valle US Patent 5,676,964.

No claims are allowed.

Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnam Sharareh, PharmD whose telephone number is 703-306-5400. The examiner can normally be reached on 8:30 am - 6:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, JD can be reached on 703-308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1123.

SS
May 3, 2002

RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200